

# PATENT COOPERATION TREATY

# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference BCT050015	<b>FOR FURTHER ACTION</b>	See item 4 below
International application No. PCT/EP2005/000758	International filing date ( <i>day/month/year</i> ) 26 January 2005 (26.01.2005)	Priority date ( <i>day/month/year</i> ) 29 January 2004 (29.01.2004)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant APPLIED RESEARCH SYSTEMS ARS HOLDING N.V.		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).																								
2.	<p>This REPORT consists of a total of 8 sheets, including this cover sheet.</p> <p>In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.</p>																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 15%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 35%;">Box No. I</td> <td style="width: 50%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input checked="" type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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<input type="checkbox"/>	Box No. VIII	Certain observations on the international application																							
4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).																								

<p>The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland</p> <p>Facsimile No. +41 22 338 82 70</p>	<p>Date of issuance of this report 31 July 2006 (31.07.2006)</p> <hr/> <p>Authorized officer</p> <p style="text-align: center; font-weight: bold;">Agnes Wittmann-Regis</p> <p>e-mail: pt06@wipo.int</p>
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# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

REC'D 09 MAY 2005

WRITTEN OPINION OF THE PCT  
INTERNATIONAL SEARCHING AUTHORITY  
(PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/EP2005/000758

International filing date (day/month/year)  
26.01.2005

Priority date (day/month/year)  
29.01.2004

International Patent Classification (IPC) or both national classification and IPC  
A61K31/366, A61K38/27, A61P3/00

Applicant  
APPLIED RESEARCH SYSTEMS ARS HOLDING N.V.

**1. This opinion contains indications relating to the following items:**

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

**2. FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

**3. For further details, see notes to Form PCT/ISA/220.**

Name and mailing address of the ISA:



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**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/EP2005/000758

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**Box No. I Basis of the opinion**

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1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
  - ☐ This opinion has been established on the basis of a translation from the original language into the following language—, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - ☐ a sequence listing
    - ☐ table(s) related to the sequence listing
  - b. format of material:
    - ☐ in written format
    - ☐ in computer readable form
  - c. time of filing/furnishing:
    - ☐ contained in the international application as filed.
    - ☐ filed together with the international application in computer readable form.
    - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and Industrial applicability**

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 1-17 with respect to industrial applicability

because:

- ☒ the said international application, or the said claims Nos. 1-17 relate to the following subject matter which does not require an international preliminary examination (*specify*):

**see separate sheet**

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☐ no international search report has been established for the whole application or for said claims Nos.
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
  - the written form ☐ has not been furnished
  - ☐ does not comply with the standard
  - the computer readable form ☐ has not been furnished
  - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE  
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**Box No. V Reasoned statement under Rule 43bis.1(a)(I) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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**1. Statement**

Novelty (N)	Yes: Claims	6,8-17,23
	No: Claims	1-5,7,18-22,24
Inventive step (IS)	Yes: Claims	
	No: Claims	6,8-17,23
Industrial applicability (IA)	Yes: Claims	18-24
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**Re Item III**

**Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

**Claims 1-17** relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

**Re Item V**

**Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

Reference is made to the following documents:

- D1: WO 00/23097 A (SAHLTECH I GOETEBORG AB; RUDLING, MATS; ANGELIN, BO) 27 April 2000 (2000-04-27)
- D2: CARR ANDREW: "HIV lipodystrophy: risk factors, pathogenesis, diagnosis and management." AIDS (LONDON, ENGLAND) APR 2003, vol. 17 Suppl 1, April 2003 (2003-04), pages S141-S148, XP002326553 ISSN: 0269-9370

If not indicated otherwise, the relevant passages are those mentioned in the International search report.

**Art. 33(2)** The present application does not meet the requirements of Article 33(2) PCT, because the subject-matter of **claims 1-5, 7, 18-22 and 24** does not appear to be new in the sense of Article 33(2) PCT.

D1 discloses the combination of a statin and growth hormone for the treatment of hypercholesterinemia.

The subject-matter of **claims 1-5, 7, 18-22 and 24** is therefore not considered to be new (Article 33(2) PCT).

The subject-matter of **claims 6, 8-17 and 23** is considered to be new in the sense of Article 33(2) PCT since the additional features (restriction to lovastatin and/or the treatment of lipodystrophy) delimit these claims from the prior art at hand.

**Art. 33(3)** The subject-matter of **claims 6, 8-17 and 23** is not considered to involve an inventive step in the sense of Article 33(3) PCT.

D2 discloses the available drugs for the treatment of lipodystrophy, from which the subject-matter of **claims 6, 8-17 and 23** differs in that a combination of drugs is used.

The problem to be solved by the present invention may therefore be regarded as how to provide a medicament for the treatment of lipodystrophy.

Yet, D1 teaches the use of the claimed combination for lowering blood lipids.

Taking into account the teaching of the cited prior art the following reasoning applies:

With respect to the subject-matter of the remaining **claims 6, 9-17 and 23** the applicant's attention is drawn to the fact that there seems to be no basis for inventive step within the present application as filed since no evidence can be found that the features which are novel result in a solution of the posed problem which could not have been foreseen by the skilled person.

Being aware of the teaching of D2 the skilled person performed an arbitrary choice out of one list containing all drugs for the treatment of lipodystrophy to select.

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING  
AUTHORITY (SEPARATE SHEET)**

International application No.

**PCT/EP2005/000758**

Since there is no surprising effect resulting from that choice, the solution proposed in **claims 6, 9-17 and 23** of the present application is not considered to be inventive in the sense of Article 33(3) PCT.

With respect to the subject-matter of the remaining **claim 8** the applicant's attention is drawn to the fact that there seems to be no basis for inventive step within the present application as filed since no evidence can be found that the posed problem has been solved as it has not been shown that the combinations of the present application are effective in the treatment of non HIV related lipodystrophy.

It is therefore noted, that the solution proposed in **claims 6, 8-17 and 23** of the present application is not considered to be inventive in the sense of Article 33(3) PCT.

**Art. 33(4)** The subject-matter of **claims 18-24** is considered to be industrially applicable in the sense of Art. 33(4) PCT.

For the assessment of the present **claims 1-17** on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.